IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8186 OF 2005

Nazer Homi Canteenwalla & anr. .... Petitioner

versus

Roshan Sahvaksha Driver & Trustees ... Respondents.

Shri S.V.Oak for the petitioner
Shri C.M.Mehta for Respondents.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 22, 2006.

P.C:

1. Heard both the sides. Perused the records.

2. This petition is aimed against the judgment and order passed by the Additional Chief Judge, Small Causes Court, Mumbai dated 17-10-2005 dismissing the appeal and confirming the order passed by the trial court dated 20-4-2004 dismissing the petitioner/plaintiff's suit for declaration and permanent injunction.

3. The petitioners/plaintiffs are brothers and are sons of one deceased Smt. Perin Homi Canteenwalla. She is the daughter of Korsaso B. Mistry, who was tenant of defendant no.2 and was residing at suit

premises at flat no.2 ground floor of bldg. no.4, Sir Ratan Tata building (Cowasji Jahangir Colony), Tardeo, Bomnbay. Said Mistry suffered from paralysis and died on 31-7-1984. His wife Mrs. Mehru died on 27-12-1960. Plaintiff no.1 is residing in the suit premises. He is tenant in respect of the suit premises and the rent receipt in respect of the suit premises stands in his name from January 2002, which was transferred in his name from the name of his mother. Rent receipt was transferred in the name of Perin from the name of Mistry from 10-2-1989. One Bomi son of Mistry was residing as a tenant. Rent receipts were never transferred in the name of Bomi Mistry. Rent receipts which were issued in the name of Mistry was transferred in the name of Perin on 10-2-1989. Bomi was not a tenant in the suit premises. It is further alleged that the defendant no.1 is the tenant of the defendant no.2 in respect of flat no.19. It is the case of the plaintiffs that their parents came to Mumbai somewhere in 1960 and resided at Andheri from 1979. Plaintiffs occasionally resided with Mistry. Tenancy rights absolutely desolved on Perin after the demise of Mistry. Perin asserted her right but the defendant no.1 did not take any heed. It is also alleged that defendant no.1 cannot assert any claim to the suit premises. Defendant no.1 tried to bring certain scheme for tenants welfare association. However it was not

finalised. He was never in possession of the suit premises and therefore suit came to be filed to seek declaration and consequential injunction to the effect that plaintiffs were entitled to continue in possession of the suit premises in their capacity as tenants therein.

4. Defendant contested the suit interalia challenging the allegations and sought dismissal of the suit.

5. The courts below after hearing both the parties and recording the evidence came to the conclusion that the court had no jurisdiction to entertain the present suit. It was further held that the suit was not maintainable in law. It was also held that the plaintiff had succeeded in establishing that plaintiff no.1 was the monthly tenant of defendant no.2 in respect of the suit premises. However in view of the legal and factual aspects, the plaintiffs were held not entitled for declaration as well as injunction and suit came to be dismissed.

6. An appeal was carried to the appellate court. The appellate court after hearing both the parties concurrent with the finding recorded by the trial court and dismissed the appeal. Hence the present petition.

7. At the outset it may be noted that the concurrent findings recorded by both the courts below that suit is not maintainable in its present form. It was also held that the court has no jurisdiction to entertain the suit.

8. The issue of jurisdiction of the court u/sec. 33 of the Maharashtra Rent Control Act was examined by both the courts below which have come to the conclusion that the suit was filed after passing of the order dated 24-6-2002 in Cri.Revision Application NO.8/01. The plaintiffs have claimed tenancy right as heirs of the deceased tenant and therefore so far as defendant no.1 is concerned, he is not claiming any tenancy right but is merely claiming for status of the licensee. Therefore it is obvious between the plaintiff and defendant no.1, there was no relationship of landlord and tenant and therefore injunction sought for by the plaintiff is infact restraining the defendant no.1 for executing the order passed by the lower court. In the circumstances it is, in my view, rightly held that the Small Causes Court had no jurisdiction to entertain the suit under the provisions of Maharashtr Rent Conmtrol Act of 1999. Similarly defendant no.2 is a public trust registered under the Bombay Public Trust Act. Plaintiffs are claiming tenancy being heirs of the

deceased mother, who is entitled to claim tenancy right under the Bomnay Rent Act. It is evident that even though defendant had raised specific objections in the course of his written statement that the suit was not maintainable unless all the trustees were joining the suit, it was sought to be submitted on behalf of the petitioner that the defendant no.2 trust is also a registered society under the Societies Registration act 1860. However, there is no evidence to show that the said public trust is also registered under the Societies Registration Act and therefore, in my considered view, the provisions of section 6 of the said Act would not be available to the petitioner. Be as it may the fact remains that the trustees of defendant no.2 trust are not joined as party to the suit. Hence suit must fail on that count also.

9. In view of these aspects, I do not see any reason to interfere with the concurrent findings recorded by both the courts below and hold that the petition is devoid of any merit and is liable to be dismissed. Hence petition stands dismissed with no order as to costs.

10. At this stage the learned counsel for the petitioner submitted that statusquo be maintained for further four weeks. In view of the facts and

circumstances, parties to maintain statusquo for four weeks from the date of this order on condition that they shall not create any third party interest in the suit property.

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